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10 Attorneys for Plaintiff

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14

15 Karen Moe Humphreys,

No. C 04 3808 SI

16 Plaintiff,

17 v.
18 NOTICE OF MOTION AND MOTION
19 TO SHORTEN TIME ON
PLAINTIFF'S MOTION TO
EXCLUDE DEFENDANTS'
REBUTTAL EXPERT WITNESSES;
20 DECLARATION OF SEUNG LEE;
PROPOSED ORDER

21 Regents of the University of California, University of
California, Berkeley, Department of Intercollegiate
Athletics and Recreational Sports, Steve Gladstone, in
his individual and official capacity, and Mark Stevens,
in his individual and official capacity,

22 Defendants.
23
24 [Civil Local Rules 6-3 and 37-1(a);
Plaintiff's Motion to Exclude
Defendants' Rebuttal Expert Witnesses
Filed Concurrently]

25 TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

26 PLEASE TAKE NOTICE THAT plaintiff Karen Moe Humphreys hereby moves to
27 shorten time on her motion to exclude defendants' rebuttal expert witnesses.
28

Humphreys v. Regents of University of California, et al.; Case No. C 04 3808 SI

In accordance with the Court's recommendation that the parties bring their motions regarding expert and rebuttal expert witnesses sooner rather than later, plaintiff moves for a Court order to shorten time on her motion to exclude defendants' rebuttal expert witnesses. Specifically, plaintiff requests that the Court set:

- defendants' opposition papers to be due on Tuesday, April 11,
- plaintiff's reply to be due the following day, Wednesday, April 12, *and*
- the hearing on the motion for Friday, April 14 (set concurrently with the hearing on the motion for summary judgment) or as soon the Court may hear the motion.

Plaintiff believes that this briefing schedule is both necessary and desirable in light of the upcoming pre-trial deadlines on April 18. Plaintiff's motion is neither legally nor factually so complex as to warrant having it heard on a regular law and motion calendar. And, with trial just five weeks away, a shortened briefing schedule will ensure that the parties stay on track to meet the many pre-trial deadlines and focus on preparing to try the case in May.

Without an order shortening time, plaintiff's motion could not be heard until April 28, the next available date on the Court's calendar. That would be ten days *after* the parties' joint pre-trial statement is due, after the other motions in limine have been filed, and just two weeks before trial. By that time, the parties will have engaged in significant pre-trial preparations, some of which could be avoided by a decision regarding defendants' rebuttal expert witnesses.

Plaintiff seeks to exclude defendants' rebuttal experts because their disclosures were wholly deficient under Fed. R. Civ. Proc. 26(a)(2)(B), in some instances failing to make even basic disclosures regarding compensation, past testimony or past publications, failing to state with even minimal particularity why they disagree with plaintiff's experts, and attempting to sneak in non-rebuttal testimony. Defendants likely will claim that any deficiencies are non-prejudicial and that the scope of "rebuttal" testimony is broad enough to encompass their experts' opinions.

Plaintiff attempted to obtain defendants' stipulation to the above briefing schedule. She sent letters (by facsimile) on April 2 and on April 4, requesting defendants respond to plaintiff's

1 proposed dates. Plaintiff also indicated that she would file her motion to exclude defendants'
2 rebuttal expert witnesses, as well as this request to shorten time, today. As of the filing of this
3 motion, she has not yet heard from defendants.

4 In light of the need to have this matter disposed of in a timely manner, and in accordance
5 with the Court's recommendation that the parties bring their motions regarding expert and
6 rebuttal expert witnesses sooner rather than later, plaintiff respectfully requests that the Court
7 shorten time on her motion to exclude defendants' rebuttal expert witnesses.

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9 Dated: April 6, 2006

10

11 CALVO & CLARK LLP

12

13 By: 

14 Seung Lee

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Humphreys v. Regents of University of California, et al.; Case No. C 04 3808 SI

DECLARATION OF SEUNG LEE

1. My name is Seung Lee, and I am an associate at Calvo & Clark and one of the attorneys for plaintiff in this action.

2. I believe that disposing of the rebuttal expert matter on shortened time will help the parties stay on track to meet the many pre-trial deadlines and focus on preparing to try the case on May 15.

3. I checked the Court's calendar today and the next available date to schedule a hearing on a civil motion would be April 28.

4. In short, plaintiff seeks to exclude defendants' rebuttal experts because their disclosures and accompanying reports were woefully deficient under Fed. R. Civ. Proc. 26(a)(2)(B), despite plaintiff's multiple grants of extensions. Defendants likely will claim that any deficiencies are non-prejudicial and that the scope of "rebuttal" testimony is broad enough to encompass their experts' opinions.

5. On April 2, Kathy Fisher, a partner at Calvo & Clark and one of the attorneys for plaintiff in this action, sent a letter to counsel for defendants, proposing that the parties file their motions regarding expert and rebuttal expert witnesses on April 6, with opposition papers due on April 11, replies due the following day on April 12 and the hearing on the motion set for Friday, April 14. I reviewed the letter immediately before it was transmitted to counsel for defendants and can attest that a true and correct copy of the April 2 letter is attached hereto as Exhibit A.

6. On April 4, I sent a letter to counsel for defendants, requesting that if defendants were unable to agree to the proposal set forth in Ms. Fisher's letter, defendants at least agree to the shortened briefing schedule for plaintiff's motion to exclude defendants' rebuttal experts. I indicated that plaintiff would be filing her motion and a request for shortened time today. Attached hereto as Exhibit B is a true and correct copy of the April 4 letter.

7. As of the filing of this motion, I have not heard back from defendants.

8. Pursuant to Civil L.R. 6-3(a)(5), I have reviewed the prior Court orders and stipulations in this matter, and believe that the following constitute "all previous time modifications in this case" (any omissions are wholly inadvertent):

- 1 ▪ December 21, 2004 Order accepting parties' stipulation that plaintiff will file her First
- 2 Amended Complaint by December 20, 2004 and defendants will file a responsive
- 3 pleading by January 14, 2005.
- 4 ▪ January 13, 2005 Order accepting parties' stipulation that plaintiff may file her Second
- 5 Amended Complaint and defendants will file a responsive pleading by January 31, 2005;
- 6 ▪ February 4, 2005 Order accepting parties' request for a continuance and moving the case
- 7 management conference to February 18, 2005;
- 8 ▪ April 6, 2005 Order accepting parties' request for a continuance and moving the further
- 9 case management conference to July 15, 2005;
- 10 ▪ June 30, 2005 Order accepting parties' request for a continuance and moving the further
- 11 case management conference to September 2, 2005;
- 12 ▪ September 2, 2005 Order continuing trial to May 15, 2006, setting pre-trial conference
- 13 for May 2, and moving dispositive motions hearing to March 31, 2005, with motions due
- 14 February 24 (as noted in the civil pre-trial minutes, filed September 7, 2005);
- 15 ▪ September 7, 2005 Order (filed October 6, 2005) shortening length of trial to 8 days.
- 16 ▪ October 5, 2005 Order accepting parties' stipulation that plaintiff may file an amended
- 17 complaint by October 12, and defendants will file a responsive pleading by January 31,
- 18 2005.
- 19 ▪ October 17, 2005 Order accepting parties' stipulation that plaintiff may file an amended
- 20 complaint by October 14.
- 21 ▪ December 19, 2005 Order accepting parties' stipulation and moving expert dates to
- 22 January 30, 2006 for expert disclosures, February 17 for rebuttal expert disclosures, and
- 23 March 10 for the expert discovery cut-off.
- 24 ▪ January 30, 2006 Order accepting parties' stipulation: (1) moving expert dates to
- 25 February 13, 2006 for expert disclosures, February 24 for rebuttal expert disclosures, and
- 26 March 10 for the expert discovery cut-off, and (2) moving dispositive motion dates to
- 27 March 17 for filing motions, March 31 to file oppositions, April 7 to file reply briefs, and
- 28 April 14 for the hearing.

- February 16, 2006 Order extending the time for mediation to the first three weeks in March.
- April 5, 2006 Order extending deadline for defendants' reply brief on the motion for summary judgment to April 10, 2006.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was signed by me on April 6, 2006, in San Francisco, California.

Seung Lee

Exhibit A

CALVO & CLARK LLP



One Lombard Street
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P: 415.374.8370 F: 415.374.8373
WWW.CALVOCLARK.COM

April 2, 2006

TO: Gary T. Lafayette
Lafayette & Kumagai
Facsimile No.: 415-357-4605

FROM: Kathleen V. Fisher

NUMBER OF PAGES INCLUDING THIS ONE: 2

RE: Karen Moe Humphreys v. Regents of the University Of Calif., et al.;
US District Court Case No. C-04-3808 SI

DOCUMENTS TRANSMITTED HEREWITH:

1. Letter to Gary T. Lafayette

MESSAGE

CONFIDENTIALITY NOTICE

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CALVO & CLARK LLP

One Lombard Street
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April 2, 2006

TO: Gary T. Lafayette
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Facsimile No.: 415-357-4605

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kfisher@calvocclark.com

April 2, 2006

VIA FACSIMILE: (415) 357-4605

CONFIRMATION

Gary T. Lafayette
LAFAYETTE & KUMAGAI LLP
100 Spear Street, Suite 600
San Francisco, California 94105

**RE: Karen Moe Humphreys v. Regents of the University Of Calif., et al.;
US District Court Case No. C-04-3808 SI**

Dear Gary:

Judge Illston suggested we confer regarding cross motions regarding expert witnesses. We propose the following schedule: Motions by both sides with respect to experts and expert reports would be due on Thursday, April 6, 2006. Opposition would be due on Tuesday, April 11, 2006, and reply briefs would be due on Wednesday, April 12, 2006. The motions could then be heard on Friday, April 14, 2006, at the same time as the motion for summary judgment is heard.

Sincerely,



Kathleen V. Fisher

KVF:nm

Exhibit B

CALVO & CLARK LLP

One Lombard Street
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April 4, 2006

TO: **Gary T. Lafayette**
Facsimile No.: **(415) 357-4605**

FROM: Seung Lee

NUMBER OF PAGES INCLUDING THIS ONE: **2**

RE: **Karen Moe Humphreys v. Regents of the University Of Calif., et al.;**
US District Court Case No. C-04-3808 SI

DOCUMENTS TRANSMITTED HEREWITH:

1. Letter of even date.

MESSAGE

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April 4, 2006

VIA FACSIMILE - (415) 357-4605

Gary T. Lafayette
LAFAYETTE & KUMAGAI LLP
100 Spear Street, Suite 600
San Francisco, California 94105

CONFIRMATION

**RE: Karen Moe Humphreys v. Regents of the University Of Calif., et al.;
US District Court Case No. C-04-3808 SI**

Dear Gary:

I want to follow up on Kathy Fisher's April 2, 2006 letter to you proposing dates regarding expert motions. Judge Illston further suggested that the parties file these motions sooner rather than later. As of the transmission of this letter to you, plaintiff has not heard back regarding this schedule.

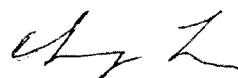
If you are unable to agree to the proposed schedule set out in Kathy's letter, we ask that you agree to plaintiff's motion to shorten time on her motion to exclude defendants' "rebuttal" experts as proposed:

- Motions due on April 6, 2006;
- Oppositions due on Tuesday, April 11;
- Replies due on Wednesday, April 12;
- Hearing on Friday April 14 (concurrently with hearing on the motion for summary judgment).

Please let us know your position prior to our filing a request to shorten time and motion on Thursday, April 4, 2006.

Sincerely,

CALVO & CLARK, LLP



Seung Lee

SL:skw

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April 4, 2006

TO: Gary T. Lafayette
Facsimile No.: (415) 357-4605

FROM: Seung Lee

NUMBER OF PAGES INCLUDING THIS ONE: 2

RE: Karen Moe Humphreys v. Regents of the University Of Calif., et al.;
US District Court Case No. C-04-3808 SI

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1. Letter of even date.

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GUAM

SAIPAN

SAN FRANCISCO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Karen Moe Humphreys,

No. C 04 3808 SI

Plaintiff.

PROPOSED ORDER

V.

Regents of the University of California, University of California, Berkeley, Department of Intercollegiate Athletics and Recreational Sports, Steve Gladstone, in his individual and official capacity, and Mark Stevens, in his individual and official capacity,

Defendants

Pursuant to Civil Local Rule 6-3, the Court hereby GRANTS plaintiff's motion to shorten time on her motion to exclude defendants' rebuttal expert witnesses. Defendant's opposition papers will be due ~~April 11~~ and plaintiff's reply papers will be due ~~April 12~~. The Court will hear the motion on ~~April 14~~ April 28, 2006, at 9:00 a.m.

IT IS HEREBY ORDERED.

Dated:-

Susan Ilston

The Honorable Susan Illston
United States District Court Judge

PROPOSED ORDER